


<b>CIVIL TRACKING ORDER</b> (STANDING ORDER 1- 88)	DOCKET NUMBER <b>1872CV00553</b>	<b>Trial Court of Massachusetts</b> <b>The Superior Court</b> 
CASE NAME: Town of Provincetown vs. John F Christiansen		Scott W. Nickerson, Clerk of Court Barnstable County
TO: File Copy		COURT NAME & ADDRESS Barnstable County Superior Court 3195 Main Street Barnstable, MA 02630

### TRACKING ORDER - F - Fast Track

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

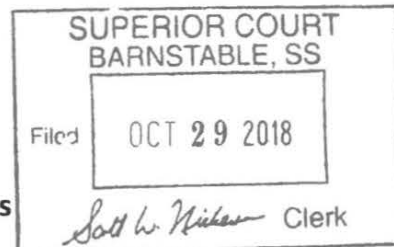
#### STAGES OF LITIGATION

#### DEADLINE

	SERVED BY	FILED BY	HEARD BY
Service of process made and return filed with the Court		01/10/2019	
Response to the complaint filed (also see MRCP 12)		02/11/2019	
All motions under MRCP 12, 19, and 20	02/11/2019	03/11/2019	04/10/2019
All motions under MRCP 15	02/11/2019	03/11/2019	04/10/2019
All discovery requests <b>and depositions</b> served and non-expert depositions completed	08/08/2019		
All motions under MRCP 56	09/09/2019	10/07/2019	
Final pre-trial conference held and/or firm trial date set			02/04/2020
Case shall be resolved and judgment shall issue by			10/12/2020

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.  
**Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.**  
 This case is assigned to

DATE ISSUED <b>10/15/2018</b>	ASSISTANT CLERK <b>Scott W Nickerson</b>	PHONE <b>(508)375-6684</b>
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1  
2  
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Commonwealth of Massachusetts

BARNSTABLE, SS.

TRIAL COURT OF THE COMMONWEALTH  
SUPERIOR COURT DEPARTMENT  
CIVIL DOCKET NO. 1872CV00553

Town of Provincetown

\_\_\_\_\_, PLAINTIFF(S),

v.

John F. Christiansen

\_\_\_\_\_, DEFENDANT(S)

SUMMONS

THIS SUMMONS IS DIRECTED TO John F. Christiansen. (Defendant's name)

**You are being sued.** The Plaintiff(s) named above has started a lawsuit against you. A copy of the Plaintiff's Complaint filed against you is attached to this summons and the original complaint has been filed in the Barnstable Superior Court. **YOU MUST ACT PROMPTLY TO PROTECT YOUR RIGHTS.**

1. **You must respond to this lawsuit in writing within 20 days.** If you do not respond, the court may decide the case against you and award the Plaintiff everything asked for in the complaint. You will also lose the opportunity to tell your side of the story. You must respond to this lawsuit in writing even if you expect to resolve this matter with the Plaintiff. **If you need more time to respond, you may request an extension of time in writing from the Court.**
2. **How to Respond.** To respond to this lawsuit, you must file a written response with the court and mail a copy to the Plaintiff's Attorney (or the Plaintiff, if unrepresented). You can do this by:
  - a. Filing your **signed original** response with the Clerk's Office for Civil Business, Superior Court, by mail to P.O. Box 425, or in person to 3195 Main Street, Barnstable, MA 02630, AND
  - b. Delivering or mailing a **copy** of your response to the Plaintiff's Attorney/Plaintiff at the following address: 101 Arch Street, 12th Fl. Boston, MA 02110
3. **What to include in your response.** An "**Answer**" is one type of response to a Complaint. Your Answer must state whether you agree or disagree with the fact(s) alleged in each paragraph of the Complaint. Some defenses, called affirmative defenses, must be stated in your Answer or you may lose your right to use them in court. If you have any claims against the Plaintiff (referred to as **counterclaims**) that are based on the same facts or transaction described in the Complaint, then you must include those claims in your Answer. Otherwise, you may lose your right to sue the Plaintiff about anything related to this lawsuit. If you want to have your case heard by a jury, you must **specifically** request a jury trial in your Answer or in a written demand for a jury trial that you must send to the other side and file with the court no more than 10 days after sending your Answer. You can also respond to a Complaint by filing a "**Motion to Dismiss**," if you believe that the complaint is legally invalid or legally insufficient. A Motion to Dismiss must be based on one of the legal deficiencies or reasons listed under **Mass. R. Civ. P. 12**. If you are filing a Motion to Dismiss, you must also comply with the filing procedures for "Civil Motions" described in the rules of the Court in which the complaint was filed, available at www.mass.gov/courts/case-legal-res/rules of court.



Legal Assistance. You may wish to get legal help from a lawyer. If you cannot get legal help, some basic information for people who represent themselves is available at [www.mass.gov/courts/selfhelp](http://www.mass.gov/courts/selfhelp). Required information on all filings: The "civil docket number" appearing at the top of this notice is the case number assigned to this case and must appear on the front of your Answer or Motion to Dismiss. You should refer to yourself as the "Defendant."

Witness Hon. Judith Fabricant, Chief Justice on \_\_\_\_\_, 20\_\_\_\_. (SEAL)

Scott W. Nickerson  
Clerk Magistrate

*Scott W. Nickerson*

Note: The number assigned to the Complaint by the Clerk-Magistrate at the beginning of the lawsuit should be indicated on the



Barnstable County Sheriff's Office  
Barnstable, MA

3261 Main Street, Barnstable MA 02630 Telephone (508) 362-9571

October 26, 2018

I hereby certify and return that on 10/25/2018 at 1:30 PM I served a true and attested copy of the Summons, Verified Complaint, Civil Action Cover Sheet & Civil Tracking Order in this action in the following manner: To wit, by leaving at the last and usual place of abode of John F. Christiansen, 62 Beach Road, West Yarmouth, MA 02673 and by mailing an attested copy of the summons 1<sup>st</sup> class to the above address on 10/25/2018. Attest(2) (\$10.00) Basic Service (\$20.00) Conveyance (\$3.00) Postage & Handling (\$2.00) Travel (\$7.50) Total: \$42.50

Deputy Sheriff Brad Parker

*Brad Parker*

Deputy Sheriff

N.B. TO FAILURE SERVER:

PLEASE ENTER THE DATE THAT YOU MADE SERVICE ON THE DEFENDANT IN THIS BOX - BOTH ON THE ORIGINAL SUMMONS AND ON THE COPY OF THE SUMMONS SERVED ON THE DEFENDANT.

CIVIL ACTION C

LAINTIFF(S): Town of Provincetown, Massachusetts 02656  
ADDRESS: 260 Commercial Street  
ATTORNEY: William Hewitt  
ADDRESS: KP Law, P.C.  
31 Arch Street, 12th Floor  
Boston, MA 02110  
JO: 541910

CODE NO. AA1; E9

"Other" please describe:

following is a full, itemized list of damages, form, disregard double or triple damages

- Documented medical expenses
- 1. Total hospital expenses
- 2. Total doctor expenses
- 3. Total chiropractic expenses
- 4. Total physical therapy expenses
- 5. Total other expenses

Documented lost wages and benefits  
Documented property damage  
Reasonably anticipated future damages  
Reasonably anticipated lost profits  
Other documented items of damages

Briefly describe plaintiff's injuries

Provide a detailed description of damages

EDUCATIONS FROM ABANDONED  
nature of Attorney/Pro  
RELATED ACTIONS: Please  
NOTE

I hereby certify that I have completed this form (1:18) requiring that I provide advantages and disadvantages

Signature of Attorney of R

## CIVIL ACTION COVER SHEET

DOCKET NUMBER

1872CUS93

Trial Court of Massachusetts  
The Superior Court

SUPERIOR COURT

BARNSTABLE, SS

COUNTY

Barnstable

PLAINTIFF(S):

Town of Provincetown, by and through Rex McKinsey as Harbormaster

ADDRESS:

260 Commercial Street

Provincetown, Massachusetts 02657

FILED OCT 12 2018

DEFENDANT(S):

John F. Christiansen

Scott M. Clerk

ATTORNEY:

William Hewig, III

ADDRESS:

KP Law, P.C.

ADDRESS:

62 Beach Road

Arch Street, 12th Floor

West Yarmouth, MA 02673

Provincetown, MA 02110

Phone: 541910

TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

CODE NO.

AA1; E99

TYPE OF ACTION (specify)

CONTRACT

TRACK

F

HAS A JURY CLAIM BEEN MADE?

☐ YES☒ NO

"Other" please describe:

ENFORCEMENT OF HARBOR REGULATIONS.

## STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

Following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For form, disregard double or treble damage claims; indicate single damages only.

## TORT CLAIMS

(attach additional sheets as necessary)

Documented medical expenses to date:

1. Total hospital expenses .....
2. Total doctor expenses .....
3. Total chiropractic expenses .....
4. Total physical therapy expenses .....
5. Total other expenses (describe below) .....

Subtotal (A):

Documented lost wages and compensation to date .....

Documented property damages to date .....

Reasonably anticipated future medical and hospital expenses .....

Reasonably anticipated lost wages .....

Other documented items of damages (describe below) .....

Briefly describe plaintiff's injury, including the nature and extent of injury:

TOTAL (A-F):\$

## CONTRACT CLAIMS

(attach additional sheets as necessary)

Provide a detailed description of claim(s):

CLAIMS FOR VIOLATION OF HARBOR  
REGULATIONS AND STATUTES AND FOR DAMAGES ARISING  
FROM ABANDONMENT AND REMOVAL OF DEFECT AND  
WRECKED FISHING VESSEL

TOTAL: \$

Signature of Attorney/Pro Se Plaintiff: X

Date: Oct 9/18

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

NONE

## CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X

William Hewig III

Date: Oct 9/18

I. PARTIES

The plaintiff, Town of Provincetown (“Town” or “Provincetown”) is a body politic and corporate within the meaning of G.L. c. 40§2, organized under the Laws of the Commonwealth of Massachusetts, and which at all material times maintains a usual place of business at Provincetown Town Hall, 260 Commercial Street, Provincetown, Massachusetts 02657.

McKinsey holds the position of Harbormaster of the Town of Provincetown, Massachusetts (“Harbormaster”), a position to which he is appointed by the Provincetown Town Manager. As Harbormaster, he is charged with overseeing and enforcing all laws and regulations as they apply to Provincetown Harbor and to William Pier.

Defendant John F. Christiansen (“Christiansen”) is an individual who at all times hereto resided at 62 Beach Road, West Yarmouth, Massachusetts 02673.

FILED OCT 12 2018

*Scott W. McKen* Clerk

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT

C.A. NO. 1872CV553

TOWN OF PROVINCETOWN, BY AND  
THROUGH REX McKINSEY AS  
HARBORMASTER,

Plaintiff

v.

JOHN F. CHRISTIANSEN,

Defendant

VERIFIED COMPLAINT

I. PARTIES

1. The plaintiff, Town of Provincetown ("Town" or "Provincetown") is a body politic and corporate within the meaning of G.L. c. 40§2, organized under the Laws of the Commonwealth of Massachusetts, and which at all material times maintains a usual place of business at Provincetown Town Hall, 260 Commercial Street, Provincetown, Massachusetts 02657.
2. Rex McKinsey holds the position of Harbormaster of the Town of Provincetown, Massachusetts ("Harbormaster"), a position to which he is appointed by the Provincetown Town Manager. As Harbormaster, he is charged with overseeing and enforcing all laws and regulations as they apply to Provincetown Harbor and to MacMilliam Pier.
3. The defendant John F. Christiansen ("Christiansen") is an individual who at all times material hereto resided at 62 Beach Road, West Yarmouth, Massachusetts 02673.



## II. JURISDICTION AND VENUE

4. Jurisdiction in the Superior Court is proper because the plaintiff is a municipal corporation, and because it seeks declaratory and equitable relief under G.L. c. 231A, §1 and c. 214 §1 respectively.
5. Venue in Barnstable County is proper under G.L. c. 273 §1, as both parties are residents of this county.

## III. STATEMENT OF FACTS

6. At all times material hereto, Christiansen was the owner of a 42-foot steel-hulled derelict scallop boat named "ARTEMIS".
7. Christiansen towed ARTEMIS to Gloucester Marine Railways in March 2015. A year later, without paying bills owed to Gloucester Marine Railways, Christiansen towed ARTEMIS to Cape Pond Ice in Gloucester, where its stay was supposed to be limited to four days.
8. ARTEMIS was in such disrepair that the Coast Guard was forced to remove all fuel and hazardous materials at a cost of \$40,000 to the United States government.
9. In June 2017, Christiansen showed up and towed ARTEMIS from Gloucester to Provincetown.
10. In order to receive permission to stay in Provincetown, Christiansen falsely represented to the Harbormaster that ARTEMIS was a "working" boat, and that it would be "working" out of Provincetown.

11. When the Harbormaster confronted Christiansen about misrepresenting his intentions, Christiansen then falsely claimed he was on the list of a local marine railway to be hauled.
12. On June 6, 2017, the Harbormaster learned that ARTEMIS was not in line for hauling and contacted Christiansen to inform him that ARTEMIS was ordered to depart the harbor by the end of that week.
13. Between June 6 and June 14, ARTEMIS was granted a Temporary Use Permit for the use of the Barry Clifford mooring.
14. On June 24, 2017, the Harbormaster again ordered ARTEMIS to depart the harbor within a week.
15. On July 3, 2017, after no response from Christenson to move or remove ARTEMIS, the Harbormaster had to move the vessel to another mooring to make way for the fireworks barge arriving that night.
16. Between July 2017 and March 2018, Christiansen violated the Harbormaster's several orders and refused either to repair or to remove ARTEMIS from Provincetown Harbor.
17. During a nor'easter on March 2-3, 2018, ARTEMIS broke loose from its mooring and wrecked on the Provincetown breakwall, with significant damage to the hull.
18. On March 28, 2018, Christiansen was given written notice under M.G.L. c. 270 §16, and Article 3-4-1 of the Provincetown Harbor Regulations the Harbormaster's determination that ARTEMIS was unsafe, unfit, and a hazard to navigation, and that continued failure to remove the vessel would subject him to liability for fines and other penalties. The Harbormaster again ordered Christiansen to remove ARTEMIS from Provincetown Harbor.



19. On or about July 3, 2018, the Harbormaster at his own expense removed ARTEMIS from the breakwall and moored it at MacMillan Pier in Provincetown.
20. On June 11, 2018, the Provincetown Chief of Police filed a criminal complaint against Christiansen in Orleans District Court under M.G.L. c. 270 Sec. 16 (Warrant No. 18-12-WA; Incident No. 18-113-OF).
21. The criminal complaint alleged that Christiansen had violated a March 30, 2018 notice to remove his vessel served in-hand by the Barnstable County Deputy Sheriff ("District Court Criminal Complaint").
22. In connection with the District Court Criminal Complaint, Christiansen appeared at Orleans District Court on July 20, 2018 for a hearing.
23. Just prior to the July 20, 2018 District Court hearing, Christiansen met with the Harbormaster and Provincetown Police Court Officer Jennifer Nolette. At that meeting, Christiansen agreed orally to decommission ARTEMIS within two weeks (the week of August 3), and to give Provincetown permission to dispose of ARTEMIS, providing that Christiansen be permitted to retain and remove from the vessel certain equipment, including winch, parts of an engine, two masts, towing block, welding generator and stainless steel hydraulic pipes.
24. The Harbormaster wrote down the terms of Christiansen's agreement. At the hearing, Christiansen repeated his agreement to the terms in open court. The harbormaster gave Christiansen and the Court Officer a hard written copy of the agreement, and Christiansen accepted it without comment or objection (Agreement is affixed as Exhibit A) ("Disposal Agreement").

25. Pursuant to the Disposal Agreement, Christiansen showed up at MacMillan Pier on or about July 30, 2018 and was assisted by the Harbormaster in removing all of the equipment and gear identified in the Disposal Agreement, including some additional gear not identified in the Agreement.
26. The Harbormaster brought some additional gear not identified in the Agreement (skiff, trailer and tools) to Court on or about August 10, 2018, and delivered it to Christiansen.
27. Pursuant to the Disposal Agreement, the Harbormaster contracted with Winkler Crane of Truro to cut up ARTEMIS at MacMillan Pier and haul it away by truck to a scrap metal recycling facility. That was carried out the week of August 6-9, 2018.
28. The total invoice for Winkler Crane's disposition and removal services was \$39,500.00.
29. In addition to the above, the Harbormaster is entitled to storage costs in the amount of \$350.00.

COUNT I

(Harbormaster v. Christiansen – Violation Harbor Regulations Ch. 3 § 3-2-3(b)  
(Storage and Removal Expenses)

30. The Harbormaster repeats and incorporates Paragraphs 1 – 29 herewith.
31. Between July 2017 and March 2018 Christiansen repeatedly and willfully violated Provincetown Harbor Regulations by disobeying the Harbormaster's orders to remove ARTEMIS from Provincetown Harbor.
32. Under Provincetown Harbor Regulations Ch. 3 § 3-2-3(b), the Harbormaster is entitled to recover all storage, disposition and removal expenses related to ARTEMIS from Christiansen.

COUNT II

Harbormaster v. Christiansen – Breach of Contract; Removal Costs under MGL c. 102 §24)

33. The Harbormaster repeats and incorporates Paragraphs 1-32 herewith.

34. By undertaking the disposition and removal of ARTEMIS after Christiansen had repeatedly violated Harbormaster orders to remove his vessel from the harbor, Christiansen is liable to Provincetown for disposition and removal costs under a theory of breach of contract as provided by GL c. 102 §24.

WHEREFORE, the Provincetown Harbormaster respectfully requests the following relief:

1. That the Court award Provincetown all disposal and removal costs for violation of Provincetown Harbor Regulations Ch. 3, Sec. 3-2-3(b);
2. That the Court award Provincetown all storage costs for violation of Provincetown Harbor Regulations Ch. 3, Sec. 3-2-3 (b);
3. That the Court award Provincetown all disposal and removal costs for violation of MGL c. 102 §24;
4. That the Court award Provincetown all costs incidental to the storage, disposal and removal of ARTEMIS;
5. That the Court award Provincetown pre-judgment and post-judgment interest as may be provided by law; and
6. That the Court award Provincetown a grant of all attorney's fees as may be provided by law.

TOWN OF PROVINCETOWN

By its attorney,



William Hewig, III (BBO# 541910)

KP Law, P.C.

Town Counsel

101 Arch Street

12th Floor

Boston, MA 02110-1109

(617) 556-0007

Date: October 9, 2018.


644647/24212/0011



VERIFICATION

I, Rex McKinsey, do hereby declare under the pains and penalties of perjury that I have read the foregoing Verified Complaint and I know the contents thereof, and that the same is true to my knowledge except to those matters that are alleged on information and belief and as to those matters, I believe them to be true.

Executed on this 3<sup>RD</sup> day of October, 2018 in Provincetown, Barnstable County, Massachusetts.

  
\_\_\_\_\_  
Rex McKinsey, Provincetown Harbormaster